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the trustee of the Sonja Dinihanian GST Trust DTS 1/1/11

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF OREGON

In re:	)	Case Nos.
	)	19-31883-dwh11 (Lead case)
15005 NW Cornell LLC and	)	19-31886-dwh11
	)	
Vahan M. Dinihanian, Jr.	)	Jointly Administered Under
	)	19-31883-dwh11
Debtor(s).	)	
_____	)	
	)	Adv. No. 20-03079-dwh
15005 NW CORNELL LLC, an Oregon limited	)	
liability corporation,	)	<b>DEFENDANT'S CORRECTED</b>
	)	<b>SUPPLEMENTAL MEMORANDUM</b>
Plaintiff,	)	<b>OF ADDITIONAL AUTHORITIES</b>
	)	<b>REGARDING PLAINTIFF'S FIRST</b>
v.	)	<b>CLAIM</b>
	)	
TASHA TEHERANI-AMI, IN HER CAPACITY	)	
AS THE TRUSTEE OF THE SONJA	)	
DINIHANIAN GST TRUST DTS 01/01/11,	)	
	)	
Defendant.	)	
_____	)	

Tasha Teherani-Ami, in her capacity as the trustee of the Sonja Dinihanian GST Trust

1 DTS 1/1/11 ("Defendant" or "Trust") submits this post-trial memorandum in response to this  
2 Court's request for additional authority on an issue concerning the Plaintiff's first claim for  
3 relief.

4 "Was the recording of the trust deed [securing Vahan Dinihanian's debt to Tash  
5 Dinihanian( nka Tash Teherani-Ami)] sufficient to give constructive notice of the  
6 provisions of the [divorce judgment entered in the Circuit Court for the State of Oregon,  
7 Multnomah County, Case No. 120868730] to a good faith purchaser for value, depriving  
8 [15005 NW Cornell LLC] of the ability to use section 544(a)(3) to avoid the title  
9 conveyance [of an undivided 25% interest at a tenant in common in the Cornell property]  
10 to the Trust?"

11 **Plaintiff's First Claim for Relief**

12 A bankruptcy trustee is given so-called "strong arm" powers under 11 U.S.C. § 544,  
13 which include the powers of a bona fide purchaser of real property under state law:

14 (a) The trustee shall have, as of the commencement of the case, and without  
15 regard to any knowledge of the trustee or of any creditor, the rights and powers of,  
16 or may avoid any transfer of property of the debtor or any obligation incurred by  
the debtor that is voidable by—

\* \* \*

17 (3) a bona fide purchaser of real property, other than fixtures, from the debtor,  
18 against whom applicable law permits such transfer to be perfected, that obtains  
the status of a bona fide purchaser and has perfected such transfer at the time of  
the commencement of the case, whether or not such a purchaser exists.

19 As explained by the court in *Michael A. Grassmueck, Inc. v. Wurst*, 09-6130-FRA, 2009  
20 WL 3367042, at \*2 (Bankr D Or Oct 16, 2009):

21 A bankruptcy estate includes 'all legal or equitable interests of the debtor  
22 in property as of the commencement of the case.' Code § 541(a)(1). Where the  
23 estate has an interest in property, BFP status allows the trustee to succeed to that  
24 interest free of unrecorded interests, but subject to notice of facts respecting a  
25 prior unrecorded interest in the property that reasonable inquiry would have  
disclosed, if there exist facts that would lead a reasonable person to inquire into  
other possible interests in the property (i.e. inquiry notice). *See In re Roman  
Catholic Archbishop of Portland*, 335 B.R. 868, 881 (Bankr.D.Or.2005).

26 The key is that only legal and equitable interests that belonged to the

1 debtor become property of the estate. In order for the trustee to exercise his rights  
2 as a BFP, it must first be established that the estate has a legal or equitable interest  
3 in the property in question. The trustee cannot use his BFP status to turn  
4 non-estate property into estate property.

5 *Michael A. Grassmueck, Inc. v. Wurst*, 09-6130-FRA, 2009 WL 3367042, at \*2 (Bankr D Or Oct  
6 16, 2009).

7 Inquiry notice may arise “when the existence of a claimed interest in real property may be  
8 determined through investigation based on facts available to the claimant that would cause a  
9 reasonable person to make such inquiry.” *Gorzeman v. Thompson*, 162 Or.App. 84, 92, 93, 986  
10 P.2d 29 (1999)(“plaintiff had the burden of proving their status as bona fide purchasers.”). “To  
11 be charged with notice of facts a reasonable inquiry would have disclosed, there first must be  
12 facts that would cause a reasonable person to make such inquiry. In other words, there must be a  
13 duty to inquire before the purchaser is charged with notice of what she would have learned had  
14 she made the inquiry.” *In re Roman Catholic Archbishop of Portland in Oregon*, 335 BR 868,  
15 881 (Bankr. D. Or. 2005). See also *Spady v. Graves*, 307 Or. 483, 488 n. 3, 770 P.2d 53  
16 (1989)(explaining that constructive notice can be either record notice under the statutes or  
17 inquiry notice).

18 In *High v. Davis*, 283 Or 315, 333–34, 584 P2d 725, 736 (1978) inquiry notice was based  
19 upon notations in a preliminary title report that mentioned memberships granting hunting and  
20 fishing rights, “some of which are recorded.” The mortgagee in that case was charged with  
21 knowledge of all of the memberships because he should have asked about the number and nature  
22 of those interests. Significantly, some of the documents that evidenced the membership interests  
23 and rights were not recorded. Nevertheless, the court held that the information in the title report  
24 was sufficient.

25 A helpful statement of this concept is set out in *Greene v. Legacy Emanuel Hosp. &*  
26 *Health Care Ctr.*, 335 Or 115, 122–23, 60 P3d 535, 539 (2002)(distinguishing the concept of  
inquiry notice in the context of real property transactions from its use in connection with when a

1 person might be charged with “inquiry notice” in connection with discovery of a personal injury  
2 and the commencement of running of the statute of limitation for such an injury). The Oregon  
3 Supreme Court stated that it has used the phrase "inquiry notice":

4 to determine whether a person with some awareness of an unrecorded interest in  
5 real property could claim the status of a bona fide purchaser. *See High v. Davis*,  
6 283 Or. 315, 333, 584 P.2d 725 (1978) (describing “inquiry notice” as specie of  
7 constructive notice regarding outstanding interests in land). *High* cited *Belt et ux. v.*  
8 *Matson et al.*, 120 Or. 313, 252 P. 80 (1927), which did not use the phrase “inquiry  
9 notice” but illustrated the pertinent legal concept as follows:

10 “The law has been well settled from early times in this state that a  
11 subsequent purchaser with notice of an outstanding unrecorded title,  
12 encumbrance or interest in real property takes title subject to the  
13 outstanding unrecorded title. If the subsequent purchaser has information  
14 sufficient to put him upon inquiry as to such outstanding unrecorded title  
15 and reasonable inquiry would lead to full information regarding such  
16 unrecorded interest and he neglects to make such inquiry, he takes title to  
17 the land charged with such outstanding title or interest.

18 ' \* \* \* \* '

19 “*Carter v. Portland*, 4 Or. 339, 350 [ (1873) ]:

20 “‘*The general doctrine is, that whatever is sufficient to direct the*  
21 *attention of a purchaser to the prior rights and equities of third persons,*  
22 *and to enable him to ascertain their nature by inquiry, will operate as*  
23 *notice.’ *Musgrove v. Bonser*, 5 Or. 313, 317 [ (1874) ] (20 Am. Rep.*  
24 *737).’*”

25 *Belt*, 120 Or. at 320–21, 252 P. 80.

26 Those passages demonstrate that the constructive notice rule in the law of  
real property functions to determine whether a purchaser of real property had  
imputed notice of unrecorded interests in the property at the time of purchase.

*Greene v. Legacy Emanuel Hosp. & Health Care Ctr.*, 335 Or 115, 122–23, 60 P3d 535, 539  
(2002) (emphasis added).

Vahan M Dinihanian signed the Trust Deed for 15005 LLC as the grantor under the Trust  
Deed in his capacity as the manger of that LLC, and personally as the "Guarantor." The General  
Judgment was directly tied to and critical to the terms of the Trust Deed. The Trust Deed  
contains these terms.

WHEREAS, Beneficiary and Guarantor are parties to that certain dissolution of

1 marriage proceeding entitled *Tasha L. Dinihanian, Petitioner, and Vahan M*  
2 *Dinihanian, Respondent*, Multnomah County, Oregon Circuit Court Civil Case  
Number 1208-68730 ("Lawsuit").

3 WHEREAS, Beneficiary and Guarantor have reached a mediated agreement  
4 pursuant to which the Lawsuit will be settled through entry of a General Judgment  
of Dissolution of Marriage in the form attached hereto as Exhibit A and  
5 incorporated herein ("Judgment").

\* \* \*

6 NOW, THEREFORE, for good and valuable consideration, receipt of which is  
hereby acknowledged, and for the purpose of securing the Obligations described  
7 in Section 1.1 below, Grantor irrevocably grants, bargains, sells, conveys, assigns,  
and transfers to Trustee in trust for the benefit and security of the Beneficiary,  
8 with power of sale and right of entry and possession, all of Grantor's right, title,  
and interest in and to the real property located in Washington County, Oregon,  
9 and more particularly described in Exhibit B attached to this Trust Deed and  
incorporated herein (the "Property" or "Trust Property");

10 The parties made the General Judgment part of what was defined as the "Security  
11 Documents."

12 PROVIDED ALWAYS, that if all the Obligations (as defined in Section 1.1  
13 below) are paid, performed, and satisfied in full, then the lien and estate granted  
by this Trust Deed will be reconveyed.

14 This Trust Deed, the Judgment, and all other agreements or instruments executed  
15 at any time in connection with them, as they may be amended or supplemented  
from time to time, are sometimes collectively referred to below as the "Security  
16 Documents."

The Trust Deed secures the promise to deliver a deed to the Trust. Section 1 provides:

17 1.1 Obligations Secured. This Trust Deed secures the following, collectively  
18 referred  
19 to as the "Obligations":

20 (1) The payment of all of the Money Award, including but not limited to  
principal and interest as provided in the Judgment, *and the performance of all*  
21 *covenants and obligations of Guarantor under the Judgment*, whether such  
payment and *performance is now due or becomes due in the future*;

22 (2) Guarantor's payment and performance of all covenants and obligations  
23 in this Trust Deed, *in the other Security Documents*, and in all other security  
agreements, notes, agreements, and undertakings now existing or hereafter  
24 executed by Grantor with or for the benefit of Beneficiary; and

25 (3) The payment and *performance of any and all other indebtedness and*  
*obligations of Grantor to Beneficiary* and of Guarantor to Beneficiary *of any*  
26 *nature whatsoever, whether direct or indirect*, primary or secondary, joint or  
several, liquidated or unliquidated, whenever and however arising, and whether or

1 not reflected in a written agreement or instrument.

2 Then in paragraph 1.2, the Debtor specifically agreed to perform all of the Obligations  
3 secured by the Trust Deed.

4 1.2 Payment of Money Award and Performance of Covenants. Grantor and  
5 Guarantor will duly and punctually pay and perform all the Obligations.

6 Thus, the recorded Trust Deed gave constructive notice and inquiry notice the of delivery  
7 of the deed. *See also In re Lane*, 06-32879-ELP7, 2007 WL 1723502, at \*6–7 (Bankr D Or June  
8 11, 2007)(held inquiry notice of future advances thus trustee was not entitled to avoid the lien  
9 securing the future advances; "recorded trust deed gave constructive notice to subsequent  
10 purchasers or lienholders that future advances were secured" and "it certainly gave rise to inquiry  
11 notice" of the amount of those future advances; "The trust deed here was recorded; it showed on  
12 its face that it secured future advances. Therefore, defendant's interest in debtor's real property  
13 was not a secret, but could be discovered by looking in the property records and inquiring as to  
14 the amount, if any, of advances made prepetition under the future advances clause."). *See also*  
15 *In re Alta Mesa Res., Inc.*, 19-35133, 2021 WL 2877430, at \*6 (Bankr SD Tex July 8, 2021)  
16 (mention of documents is sufficient notice).

17 The Trust has shown that a diligent purchaser could have ascertained the terms of the  
18 General Judgment that directed the transfer based solely on the land records.

19 Here, not only was the General Judgment attached, but the Trust Deed itself gave  
20 constructive and inquiry notice of all the terms of the General Judgment. The obligation of  
21 15005 LLC to transfer an undivided 25% in the property to the Trust is part of the Trust Deed.  
22 Because the Trust Deed secured the obligations set out in the General Judgement, the General  
23 Judgment was attached. *See* Dkt. 250-1, Ex. 2.

## 24 **Conclusion**

25 The Trust Deed has not been avoided. Plaintiff has conceded the validity of the Trust  
26

1 Deed. Plaintiff agreed in the Trust Deed to perform all of the Obligations set out in the General  
2 Judgment. That is certainly constructive if not inquiry notice of the unavowed and unavoidable  
3 judicial transfer to the Trust of all equitable interests in an undivided 25% interest in the Cornell  
4 Property, the Farm. The Trust's interest cannot be avoided under 11 U.S.C. §544(a)(3).

5 Dated November 3, 2021. WYSE KADISH LLP

6 /s/ Bruce H. Orr

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NONE

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